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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re JAMIA J., a Person Coming
Under the Juvenile Court Law.

B271040

(Los Angeles County
Super. Ct. No. CK96562)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

D.B.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of
Los Angeles County, Veronica McBeth, Judge. Reversed and
remanded.

Marissa Coffey, under appointment by the Court of Appeal;
Children’s Law Center 2 and Laura West for Defendant and
Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis,
Assistant County Counsel, and David Michael Miller, Deputy
County Counsel, for Plaintiff and Respondent.

Congress enacted the Indian Child Welfare Act (ICWA)
(25 U.S.C. § 1901 et seq.) in 1978 to address an “Indian child
welfare crisis . . . of massive proportions”—an estimated 25 to 35
percent of all Indian children had been separated from their
families and placed in adoptive homes, foster care or institutions.
(H.R.Rep. No. 95-1386, 2d Sess., p. 9 (1978), *reprinted in* 1978
U.S.Code Cong. & Admin News, pp. 7530, 7531.) Although this
crisis was the product of several related causes, Congress
expressly found that State agencies and courts had often failed to
recognize the essential tribal relations of Indian people and the
cultural and social standards prevailing in Indian communities
and families. (25 U.S.C. § 1901(5).) To address this failure and
to protect Indian children and promote the stability and security
of Indian tribes and families, ICWA establishes minimum federal
standards a state court must follow before removing an Indian
child from his or her family. (25 U.S.C. § 1902; see
In re Isaiah W. (2016) 1 Cal.5th 1, 7-8; *In re W.B.* (2012)
55 Cal.4th 30, 47.)

As the California Supreme Court recently explained, notice
to Indian tribes is central to effectuating ICWA’s purpose,
enabling a tribe to determine whether the child involved in a

dependency proceeding is an Indian child and, if so, whether to intervene in or exercise jurisdiction over the matter. (*In re Isaiah W.*, *supra*, 1 Cal.5th at pp. 8-9.) Unfortunately, as this case demonstrates, the obligation to ensure timely, accurate and complete ICWA notice and to properly determine whether ICWA applies before removing a child from his or her parents too often is met by unacceptable levels of inattention or indifference.

Both parties to this appeal recognize that adequate ICWA notice was not given in this case. At their request, and in the interest of justice, we reverse the juvenile court's March 14, 2016 order terminating parental rights and remand the matter with directions to that court to order the Los Angeles County Department of Children and Family Services to complete a thorough investigation and provide proper ICWA notice to the Cherokee tribes and to file with the court copies of the notices, certified mail return receipts and any tribal letters of response. Promptly thereafter, the juvenile court shall determine whether the ICWA inquiry and notice requirements have been satisfied and whether Jamia is an Indian child. (See *In re Michael V.* (2016) 3 Cal.App.5th 225, 236.)

FACTUAL AND PROCEDURAL BACKGROUND

The Department filed a dependency petition pursuant to Welfare and Institutions Code section 300, subdivisions (a) and (b), in November 2012 on behalf of then three-week-old Jamia J. The petition alleged the child's father, Jameel J., and mother, Devin B., had a history of engaging in domestic violence in the child's presence that endangered the child's physical health and safety and also alleged Jameel had a history of illicit drug abuse and was a current abuser of marijuana, which

rendered him incapable of providing regular care and supervision of the child.

1. *Parental Notice of Cherokee Ancestry*

On November 19, 2012 Devin filed her Parental Notification of Indian Status, form ICWA-020, stating she may have Cherokee ancestry through the child's maternal grandmother. Jameel filed his form ICWA-020 the same day, stating the paternal grandmother is or was a member of a Cherokee tribe. At the detention hearing the juvenile court ordered the Department to investigate the parents' claims of Cherokee ancestry and to provide the court with a detailed report of the results of its investigation.

A combined jurisdiction/disposition hearing was held on December 19, 2012. The Department notified the court in a "last minute information" that it had provided notices to the Cherokee tribes, the Secretary of the Interior and the federal Bureau of Indian Affairs, but no responses had yet been received. Nonetheless, without making an ICWA determination, the court sustained the petition as amended,¹ declared Jamia a dependent child of the court and removed her from the physical custody of both parents and ordered her suitably placed. The court directed the Department to provide family reunification services

¹ The court amended and sustained the petition under Welfare and Institutions Code section 300, subdivision (a), finding that Devin and Jameel had a history of engaging in domestic disputes in their child's presence and identifying one recent instance in which Jameel had struck Devin. The court found that Jameel's conduct and Devin's failure to protect Jamia placed the child at risk. The subdivision (b) allegations were dismissed.

for both parents including monitored visitation. The court set a six-month review hearing for June 19, 2013, but scheduled a status hearing for January 30, 2013 to address ICWA issues, as well as the progress being made by the parents with their services.

2. The Department's Report That Additional Information Was Requested by the Cherokee Nation

The Department filed a “last minute information” report with 48 pages of attachments on January 30, 2013, the date set for the progress hearing. The Department informed the court its original notices, sent prior to the jurisdiction hearing, had not included any information from interviews with paternal relatives. Following those interviews and after obtaining additional information from the maternal grandmother, including names and roll numbers of maternal relatives who were reportedly members of the Cherokee tribe, the Department re-sent its notices.

The last minute information reported that response letters from two of the Cherokee tribes stated Jamia was not listed on their tribal rolls and was not eligible for enrollment in the tribe. However, the Department explained the response letter from the Cherokee Nation of Oklahoma stated, in part, “[T]he information sent is not complete and does not meet the Bureau of Indian Affairs Guidelines which augment 25 U.S.C. § 1901. In order to verify Cherokee heritage and comply with your request we need additional information as follows:” The letter then specifically requested the maternal great-grandmother’s middle name and date of birth and the maternal great-great-grandparents’ complete names and dates of birth. The tribe’s letter acknowledged that complete family information might not

be available but requested the Department supply as much information as possible. It also requested a written response if no additional information could be found so that a proper inquiry could be conducted and an accurate response regarding the child's ancestry provided.

Although the last minute information report summarized this letter requesting additional information, and the letter itself was one of the attachments to the report, the Department's recommendations to the court did not indicate any further action was necessary with respect to the Department's or the court's obligations under ICWA.

3. The January 30, 2013 Determination That ICWA Did Not Apply

At the progress hearing on January 30, 2013, counsel for the Department reminded the court there had been a prior hearing on ICWA issues, made a general reference to the material in the last minute information report and then asked the court to find that ICWA did not apply: "Today we have an updated 030 form [Notice of Child Custody Proceedings for Indian Child]. We have the notice and response [forms]. All three Cherokee tribes. The Department is asking to find proper ICWA notice and make findings. The child is not a native child." No mention was made of the request by the Cherokee Nation of Oklahoma for additional information necessary for it to determine whether Jamia was an Indian child.

Following additional exchanges between counsel and the court regarding Jameel's drug testing and Devin's visitation, the court, without referring to the material submitted by the Department in its last minute information, stated, "The court will make the findings at this time that there is no reason to know

that the child is a child as described by the Indian Child Welfare Act.” The minute order prepared by the clerk expanded the oral findings: “The court finds ICWA notices to be proper. The court has no reason to know the children are Indian children as defined by the Indian Child Welfare Act. The court finds that the Indian Child Welfare Act does not apply.”

4. Subsequent Proceedings and the Current Appeal

At the six-month review hearing on June 19, 2013 the court ordered the Department to continue to provide family reunification services for Devin but terminated services for Jameel. Reunification services were again continued for Devin at the 12-month review hearing on December 11, 2013 but were terminated on August 13, 2014 at the 18-month permanency review hearing. After multiple continuances a contested selection and implementation hearing (Welf. & Inst. Code, § 366.26) was held on March 14, 2016. The court terminated Devin’s and Jameel’s parental rights and transferred the care, custody and control of Jamia to the Department for adoption planning and placement.

Devin filed a timely notice of appeal. The sole argument advanced in her opening brief is that ICWA notice was insufficient.

Following the filing of Devin’s opening brief, Devin and the Department submitted a joint application and stipulation for limited reversal and remand to the superior court. The stipulation recited that the parties agreed a limited remand was appropriate and in the interest of justice and explained the Department, following remand, should provide notice to the Cherokee tribes with the additional information specifically requested by the Cherokee Nation of Oklahoma, if available, as

well as any additional information obtained from the Department's ICWA investigation.

DISCUSSION

Under *Neary v. Regents of the University of California* (1992) 3 Cal.4th 273, 282, parties to an action may agree to settle their dispute and stipulate to a reversal of the trial court judgment. Code of Civil Procedure section 128, subdivision (a)(8), modified *Neary* and provides, in part, "An appellate court shall not reverse or vacate a duly entered judgment upon an agreement or stipulation of the parties unless the court finds both of the following: [¶] (A) There is no reasonable possibility that the interests of nonparties or the public will be adversely affected by the reversal. [¶] (B) The reasons of the parties for requesting reversal outweigh the erosion of public trust that may result from the nullification of a judgment and the risk that the availability of stipulated reversal will reduce the incentive for pretrial settlement."

It is readily apparent from a review of the juvenile court proceedings, as Devin contends in her appeal, that the Department did not comply with its obligations to provide complete and accurate notice to the Cherokee tribes and then failed to properly advise the court of the request for additional information from the Cherokee Nation of Oklahoma. That error was compounded when the court found ICWA did not apply although the last minute information report specifically stated the Cherokee Nation of Oklahoma had requested additional information in order to conduct a proper inquiry and give an accurate response regarding Jamia's Cherokee ancestry.

In the present case a stipulated reversal would not adversely affect the public interest, and the reasons for reversal

outweigh any erosion of public trust. Indeed, appellate counsel for the Department is to be commended for acknowledging the errors committed by trial counsel and the court and agreeing to a limited remand to correct them. Reversing the juvenile court's order and remanding based upon the stipulation resolves all issues in the pending appeal, provides Devin with the full relief she seeks and advances respect for the court and its judgments. (See *In re Rashad H.* (2000) 78 Cal.App.4th 376, 381-382 ["[T]he parties have identified a specific error occurring in the trial court that would lead to a reversal of the parental rights termination order of May 24, 1999. They have professionally sought to promptly resolve the matter and in doing so have not in any fashion denigrated the integrity of the judicial branch; in fact they have advanced respect for the courts and their judgments."].)

DISPOSITION

The March 14, 2016 order is reversed. The matter is remanded to the juvenile court with directions to order the Department to provide complete ICWA notice to the Cherokee tribes and to file with the court copies of the notices, certified mail return receipts and any tribal letters of response. Promptly thereafter, the juvenile court is to determine whether ICWA inquiry and notice requirements have been satisfied and whether Jamia is an Indian child. If the court finds she is an Indian child, it shall conduct a new section 366.26 hearing, as well as all further proceedings, in compliance with ICWA and related California law. If not, the court's original section 366.26 order terminating parental rights is to be reinstated.

Based on the parties' stipulation and pursuant to California Rules of Court, rule 8.272(c)(1), the remittitur shall issue immediately upon the filing of this opinion.

PERLUSS, P. J.

We concur:

ZELON, J.

SEGAL, J.